

In the High Court of Judicature at Madras

Dated : 13.7.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

Writ Petition No.5381 of 2015 and M.P.No.1 of 2015

- 1.Union of India, rep.by the
Chairman, Railway Board,
New Delhi.
 - 2.The Advisor (Vigilance)
Railway Board, New Delhi.
 - 3.The General Manager,
Southern Railway, Park Town,
Chennai.
 - 4.The Chief Vigilance Officer,
Southern Railway, Park Town,
Chennai.
-Petitioners

Vs

- 1.The Registrar, Central Administrative
Tribunal, Madras Bench, Chennai-104.
 - 2.S.Killivalavan, Deputy Chief Manager/
P&D/MTP/MS, Southern Railway,
Chennai.
 - 3.The Director, Central Vigilance
Commission, New Delhi.
- ...Respondents

(Petitioner is not pressing the present writ petition as against the 3rd respondent in the light of Section 15 of the CVC Act and also as no relief is sought for against the 3rd respondent)

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the entire records of the first respondent in O.A.No.1331 of 2011 including the order dated 2.7.2014 and quash the same.

For Petitioners : Mr.R.Thiagarajan,
SC for Mr.V.G.Sureshkumar
For Respondent-2: Mr.L.Chandrakumar

Order of the Court was made by V.RAMASUBRAMANIAN,J

This writ petition is filed by the Railway Administration of the Southern Railways challenging an order passed by the Central Administrative Tribunal quashing a charge memo issued against the second respondent herein.

2. Heard Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioners/Railway Administration, assisted by Mr.V.G.Sureshkumar, learned Standing Counsel and Mr.L.Chandrakumar, learned counsel for the second respondent.

3. On 3.8.2007, the Southern Railway issued a Notification for selection to the post of Section Engineers from among the departmental candidates. 97 candidates, who were already in service of the Railways, applied. A Selection Board was constituted, comprising of a few officials to evaluate the answer papers. The second respondent was also one of those, whose services were enlisted for evaluation of answer sheets.

4. A written examination was conducted on 29.9.2007 and 27.10.2007. After evaluation of answer sheets, 54 candidates were declared to have been successful by the proceedings dated 10.12.2007. Subsequently, two additional lists were also issued containing the names of six candidates belonging to the reserved categories and containing the names of eight reserved candidates qualified as being the best among the failed candidates.

5. Thereafter, the Department published a list of about 51 employees, on 18.4.2008, as having been empanelled against the unreserved vacancies and a list of 9 employees under the quota reserved for scheduled caste/ scheduled tribe under the scheme for the best among the failed candidates.

6. Two candidates by name I.Mohammed and B.Ramamurthi challenged the list of selected candidates dated 18.4.2008 by filing two independent applications in O.A.Nos.174 and 175 of 2009 on the file of the Central Administrative Tribunal. Their contention was that the evaluation of the answer sheets was not done properly. But, the said applications were contested by the Railway Administration on the ground that the marks awarded to right answers were correct and proper and that no marks were awarded for incorrect answers. The Railway Administration also contested that there were no totalling mistakes.

7. Eventually, by a common order dated 8.12.2009, the Central Administrative Tribunal, Madras Bench, dismissed both the applications in O.A.Nos.174 and 175 of 2009 on the ground that there were no discrepancies in the matter of evaluation of the answer papers and that even in respect of reservation, proper procedure had been followed by the Railway Administration.

8. But nearly after two years of the dismissal of the applications filed by the unsuccessful candidates, the Railway Administration has issued a charge memorandum dated 12.9.2011 to the second respondent herein, who was one of those, who valued the answer sheets, making two specific allegations. The two articles of charges framed against the second respondent read as follows :

"(i) Selectively altered and enhanced the written examination marks already awarded by him to 6 (six) candidates bearing dummy numbers 140, 145, 130, 118, 166 and 127 in order to declare them as successful in the written examination. Due to this alteration and enhancement, the unqualified six candidates were forced to place in the panel for giving promotion to the post of Section Engineer (Works). Accordingly, these candidates were given promotion to the post of Section Engineer (Works).

(ii) Among 41 candidates, who had scored written examination marks between 60-70 marks, the evaluator had shown leniency to sixteen candidates bearing the dummy numbers 195, 146, 130, 145, 142, 182, 180, 138, 166, 108, 118, 120, 256, 252, 141 and 109 and awarded marks liberally as per the statement given in the Annexure II. The evaluator had awarded liberal marks to the above candidates even though their answers were not appropriate as compared with the key answers provided by the question setter. His action leads the above 16 undeserving candidates declared successful in the written examination and consequently all of them were placed in the panel and promoted to the post of Section Engineer (Works)."

9. Upon receipt of the charge memorandum, the second respondent filed an application in O.A.No.1331 of 2011 on the file of the Central Administrative Tribunal, Madras Bench. The Tribunal, by an order dated 2.7.2014, allowed the application and quashed the charge memo on the short ground that after having taken a position in the previous round of litigation by the unsuccessful candidates that it is the prerogative of the evaluators to award marks, it was not open

to the Railway Administration to turn around and charge sheet the person, who valued the answer sheets. Therefore, aggrieved by the order of the Tribunal quashing the charge memo against the second respondent, the Railway Administration is before us.

10. Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioners contended that there was no bar for the Disciplinary Authority to take action against a person, who valued the answer sheets, if it was, prima facie, found that there has been a deliberate act of omission or commission on the part of the employee concerned. The learned Senior Counsel produced the answer sheets before us to show that in respect of six candidates, the second respondent deliberately altered the marks awarded in respect of certain questions, so as to make those candidates to be declared as having passed the exams. The pass mark for an unreserved category candidate is 60 out of 100. According to the learned Senior Counsel, six candidates, who secured less than 60 marks, were awarded additional marks so as to make their total marks 60 and above. This was done selectively in respect of a few candidates and that therefore, this was a matter, which required consideration by the Disciplinary Authority.

11. In so far as the second charge is concerned, it is contended by the learned Senior Counsel for the Railway Administration that in respect of 16 candidates, the second respondent herein had awarded more marks in a very liberal manner without any correlation to the key answers. If the key answers are compared with the answers given by those candidates, it would be found, according to the learned Senior Counsel for the writ petitioner, that the marks awarded were completely disproportionate. Therefore, the contention of the learned Senior Counsel for the petitioner is that whatever might be the defence of the second respondent to the charge memo, the merits of the charges cannot form the basis for quashing the same at the threshold. It was always open to the second respondent to raise his defence and prove before the Enquiry Officer and the Disciplinary Authority that the charges were not true. Hence, the sum and substance of the contention is that the case on hand does not pass the tests laid down by this Court and the Apex Court for interfering with the charge memo.

12. We have carefully considered the above submissions.

13. We have already extracted the two sets of charges. The first article of charge relates to the award of extra marks to six candidates, who had scored less than 60 marks, so as to raise their marks to 60 marks and above. It is seen from out of the answer sheets produced before us that these six candidates had generally secured 58 or 59. It appears from those answer books that persons, who had scored 58 or 59 or 59.5 have been awarded some extra marks by the second respondent so as to make their marks cross the borderline of 60. A careful look at the first article of charge would show that the

answer books were given for evaluation only with dummy numbers. It is not the allegation of the Administration that the award of extra marks to six candidates were selectively done in respect of certain candidates, who found favour with the second respondent herein.

14. The mere allegation that extra marks had been awarded to make those, who secured between 58 and 59.5, to cross the borderline, may not really tantamount to a misconduct in terms of law. If a valuer thinks that the candidates, who are in the borderline, may be pulled up by the award of 0.5 or 1 or 1.5 marks, the same cannot be termed as an act of misconduct. After all, a person, who evaluates answer sheets of several candidates in respect of an examination, goes by certain parameters. The usage of the expression 'selectively awarded' in the first article of charges is not really supported by any other allegation as to whether the second respondent broke the dummy number code and found out the real persons, who are the examinees. There is not even an allegation that out of several candidates, who were in the borderline, the second respondent deliberately chose six candidates in the borderline to award one or two marks so as to make them pass. Even from the records, it is clear that without even knowing who are the beneficiaries of his gratis and without knowing any of these 6 candidates, the second respondent awarded grace marks ranging from 0.5 to 2.00, so as to make those borderline candidates secure a pass mark.

15. As rightly pointed out by the Tribunal in paragraph 5 of its order, the Railway Administration had taken a positive stand in O.A.Nos.174 and 175 of 2009 that the allegation of improper valuation of answer sheets by the evaluator is not borne out by facts and that the awarding of marks was the prerogative of the evaluator. We presume that at the time when the Railway Administration filed a counter affidavit before the Tribunal in O.A.Nos.174 and 175 of 2009, they had checked up these answer papers and filed a counter affidavit. If they have done so, the appreciation of the method of valuation done by the second respondent at that time cannot undergo a change later.

16. It is not even the case of the Railway Administration that due to oversight, they did not file a proper counter affidavit at the time when O.A. Nos.174 and 175 of 2009 came up for hearing. Therefore, we are of the considered view that the Tribunal was right in interfering with the charge memo.

17. In so far as the second article of charge is concerned, the imputation is that the second respondent had awarded marks, which have no correlation to the key answers. We do not think that the Administration can now be allowed to take such a stand, after having made the Tribunal to dismiss the applications of the failed candidates with the very same allegations. It is impossible for us to reconcile that the allegations made by the two unsuccessful candidates in O.A.Nos.174 and 175 of 2009 can form the basis of a

charge memo against the evaluator, especially after the cases of these unsuccessful candidates were hotly fought and the Administration succeeded.

18. Repeatedly, this Court and the Apex Court have held that revaluation is not a matter of right. If the Administration is allowed to take a stand after the examination is over that the marks awarded are not proper and do not correlate to the key answers, the examination conducted as such should have to be cancelled in total. We do not think that such a state of affairs could be invited.

19. There is also one more reason for our upholding the order of the Tribunal. In paragraph 5(j) of the application in O.A.No.1331 of 2011, the second respondent herein pleaded that one unsuccessful candidate, who was the applicant in O.A.No.175 of 2009, got later promoted as Chief Vigilance Officer and that he is now trying to settle scores with the valuer. Paragraph 5(j) of the application filed by the second respondent, reads as follows :

"It is with much respect submitted that in the light of the facts that perusal of the evaluated answer sheets was done with no cause as inferred from the imputation of misconduct referred in the impugned charge memorandum and inclusion of 2 vigilant inspectors as witnesses, it is overtly understood that the applicant in Original Application No.175 of 2009, a Chief Vigilance Inspector, who had failed in the selection process and lost the case before the Central Administrative Tribunal, Chennai Bench, has craftily and conveniently adopted this vengeful route by abusing his official position to take up the evaluator and ensured that an investigation was carried out against the evaluator, which is proved to be a sham analysis and the present charge memorandum issued by the fourth respondent on such investigation is against the principles of fair play, equity and justice and hence, liable to be declared as void."

20. The Railway Administration filed a counter affidavit before the Tribunal in response to the allegations contained in the main application of the second respondent. In paragraph 28 of their counter affidavit before the Tribunal, the Administration sought to meet the averments contained in paragraph 5(j) of the original application. Paragraph 28 of the reply statement reads as follows :

"With regard to grounds raised in para 5(j) of the OA, it is submitted that the innocence of the applicant can be proved during enquiry. Instead of facing the enquiry before the Inquiry

Authority, the applicant has filed this O.A., prematurely, which is liable to be dismissed. Further, it is submitted that the irregularities committed by the applicant had been assessed by the zonal authorities, Railway Board and Central Vigilance Commission. The applicant is under imagination that the charge memorandum is issued purely based on the investigation initiated by Chief Vigilance Inspector attached to Southern Railway. In this regard, it is submitted that the Central Vigilance Commission had gone through the vigilance report, comments of the administrative authorities and found that sixteen undeserving candidates, who appeared for the selection for the post of Section Engineer were declared successful by liberal award of marks by the applicant and also he enhanced the marks already obtained in respect of six candidates making them as successful in the written examination. After considering these aspects only, the Disciplinary Authority, General Manager issued charge memorandum, therefore, the contention of the applicant that the investigation is against the principles of fair play, equity and justice is denied."

21. The averments in paragraph 28 of the reply statement of the Railway Administration do not squarely meet the averments contained in paragraph 5(j). Therefore, it appears that the person, who failed in the exam, is now trying to take advantage of his promotion and posting as Chief Vigilance Inspector. This cannot be permitted.

22. It appears that after the conduct of the examination and after the results were published and the first set of two applications dismissed by the Tribunal, the Railway Administration issued a modified procedure on 3.9.2009, under which, all candidates, who passed or failed or made passed, have all been promoted. The selection process was notified on 3.8.2007 and the results were declared on 10.12.2007. The panel of selected candidates was released on 18.4.2008 and the same was challenged before the Tribunal by two unsuccessful candidates in O.A.Nos.174 and 175 of 2009. Even before the dismissal of O.A.Nos.174 and 175 of 2009 filed by the unsuccessful candidates on 8.12.2009, a modified procedure had come into existence on 3.9.2009. By this modified procedure, even those unsuccessful candidates, who were the applicants in O.A.Nos.174 and 175 of 2009, have now passed. Therefore, if all these pieces of information are put together, which have made the very conduct of the examination irrelevant today, we are of the view that the Tribunal was right in quashing the charge memo under extraordinary circumstances. Hence, we do not wish to interfere with the order of the Tribunal.

23. Accordingly, the writ petition is dismissed. No costs. Consequently, the above MP is also dismissed.

Sd/-
Assistant Registrar

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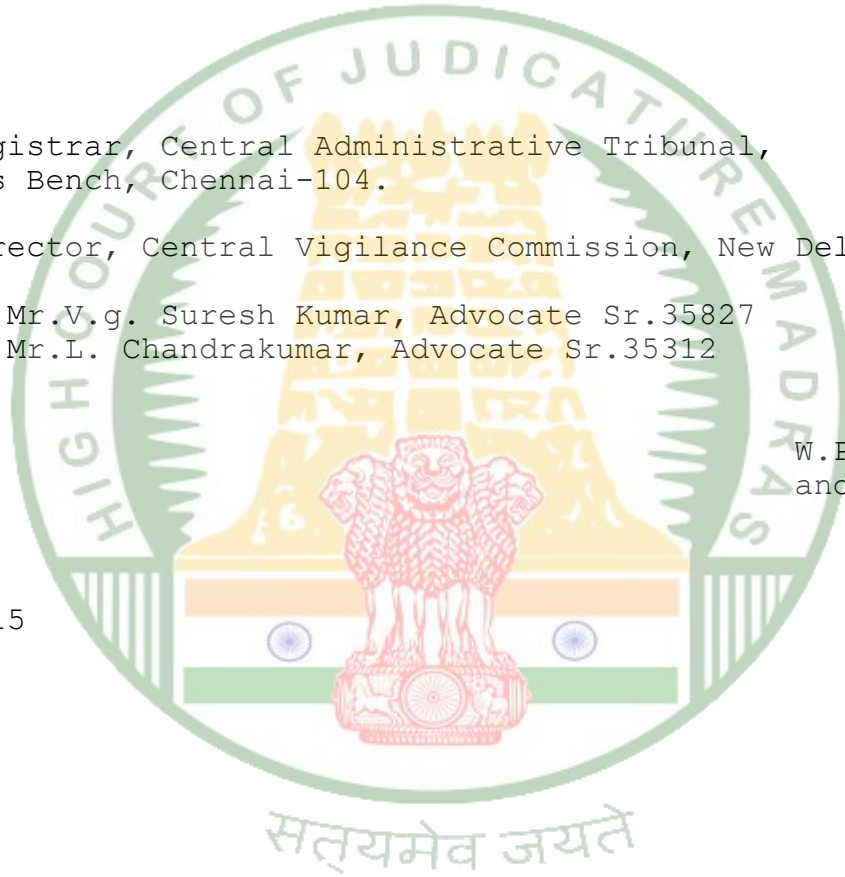
Sub Assistant Registrar

To

1. The Registrar, Central Administrative Tribunal,
Madras Bench, Chennai-104.
 2. The Director, Central Vigilance Commission, New Delhi.
- + 1 cc to Mr.V.g. Suresh Kumar, Advocate Sr.35827
+ 1 cc to Mr.L. Chandrakumar, Advocate Sr.35312

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GR(CO)
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